

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

OSCAR NUNN, JR. §
v. § CIVIL ACTION NO. 6:14cv48
GLENDA RAYNER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The Plaintiff Oscar Nunn, an inmate of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges. The named Defendants are Warden Todd Foxworth and officers Glenda Rayner, Robert Taylor, Derek Light, and Christopher Holman.

On March 22, 2016, the magistrate judge issued a report recommending that the claims against Warden Foxworth be dismissed with prejudice for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. No objections were filed to this report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).


The Court has reviewed the pleadings in this cause and the report of the magistrate judge. Upon such review, the Court has determined the report of the magistrate judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a magistrate judge's report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the report of the magistrate judge (docket no. 14) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff's claim against Warden Foxworth is DISMISSED with prejudice for purposes of proceeding *in forma pauperis* as frivolous and for failure to state a claim upon which relief may be granted. Warden Foxworth is hereby DISMISSED as a party to this lawsuit. This dismissal shall have no effect upon the Plaintiff's claims against the remaining Defendants in the case. Finally, it is

ORDERED that this dismissal shall not be counted as a strike for purposes of 28 U.S.C. §1915(g).

SIGNED this 6th day of June, 2016.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE